

5776

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

21 5111
M 127411

FILE: B-189888

DATE: March 22, 1978

MATTER OF: Lieutenant Colonel Richard Swanenburg,
USAF, Retired

DIGEST: Air Force member who incurs costs for shipment of an excess weight of household goods and unaccompanied baggage is liable for such costs under paragraph M8007-2, 1 JTR, which provides member must bear cost of excess weight transported. Failure to reweigh effects as provided in DOD Directive 4500.34R cannot increase the member's household effects shipment entitlements.

This action is in response to a letter dated July 27, 1977, from Lieutenant Colonel Richard Swanenburg, USAF, Retired, requesting reconsideration of our Claims Division settlement of June 28, 1977. That settlement disallowed his claim for reimbursement of \$1,033.12--collected from him for excess costs incurred in the shipment of his household goods incident to a permanent change of station in 1974 while serving in the United States Air Force.

By Special Order No. AA-1567, Headquarters, 405 Combat Support Group (PACAF), dated March 8, 1974, the member was reassigned on permanent change of station from Clark Air Force Base, Philippines, to Fort McNair, Washington, D.C. Special instructions item 3 to these orders states that shipment of household goods not to exceed 2,000 pounds or 25 percent of Joint Travel Regulations weight allowance, whichever is greater, is authorized in accordance with paragraph 1-4(c), Air Force Manual (AFM) 75-4.

The member shipped 1,222 pounds gross weight, of unaccompanied baggage and household goods having a net weight of 6,134 pounds. Certified weight tickets reflecting these weights were submitted to this Office. The Air Force determined that the member had shipped 1,758 pounds more than authorized and subsequently charged the member \$1,033.12 for the excess weight transported.

N-189888

The member contends that in packing his household goods the carrier used more packing material than was necessary, thereby increasing the weight of the shipment. He alleges that pursuant to chapter 6, paragraph 6007 of Department of Defense (DOD) Regulation 4500.34R he requested a reweigh of the shipment which was not accomplished. He states that while a reweigh would not have entailed breaking open the shipping crates and actually taking a net weight, he would have been put on notice that the shipment was overweight. He then would have taken further action to have the actual net weight determined.

The Air Force in its administrative report on this matter states that originally the claim against the member for excess costs for the shipment of his household effects was for \$634. However, it was subsequently determined that this amount did not include the unaccompanied baggage which had been shipped and thus the debt was increased to \$1,033.12.

The report further states that the packing services were performed in accordance with the carrier's tender of service to insure against damage to the items shipped and that, in accordance with applicable regulations, a 10 percent allowance for packing materials was subtracted from the net weight of the household effects in the computation of the excess weight. Thus the packing materials were accounted for.

In addition the report stated that although DOD Regulation 4500.34R entitled "Personal Property Traffic Management Regulation" provides in subparagraph 2c(2) of paragraph 6007, chapter 6, that reweigh of shipments will be performed prior to delivery upon request from the member, no documentation exists to show that a request for reweigh was made by the member.

Sections 406(b) and (c) of title 37, United States Code (1970), provide for the shipment of household effects of members of the uniformed services at Government expense to and from such places and within such weight allowances as may be prescribed by the Secretaries concerned. Implementing regulations are contained in Volume 1, Joint Travel Regulations (1 JTR). The table of weight allowance set out under paragraph M8003-1, 1 JTR, provides a weight limitation for a lieutenant colonel of 13,000 pounds. In addition paragraph M8002-2, 1 JTR (paragraph M8002-1, change 255, May 1, 1974, in effect at that time),

B-189888

provides that the net weight of the effects chargeable against the member's weight allowance will be determined by subtracting 10 percent from the gross weight of such shipment as an allowance for packing materials.

Another regulation applicable in this case, paragraph M8003-2, 1 JTR, provides that for shipments of household goods at Government expense to and from designated overseas stations where either public quarters or private housing is furnished with Government owned furnishings, the authorized weight allowance for members (with exception not pertinent here) will be limited to 2,000 pounds (net weight) or 25 percent (net weight) of the maximum authorized weight, whichever is greater.

Also, applicable are paragraphs M8005-2, and M8002-1, 1 JTR (change 255, dated May 1, 1974) concerning unaccompanied baggage under which if the net weight of the baggage is unknown, the actual net weight may be determined by subtracting 50 percent from the gross weight of the shipment. Paragraph 1-k (3) of AFM 75-4 provides the weight allowances for unaccompanied baggage.

Paragraph M8007-2, 1 JTR, provides that the member will bear all transportation costs for weights in excess of the maximum allowable weight allowance.

In accordance with the above regulations the Air Force determined, after allowing for the member's unused baggage allowance, that he had excess chargeable weight of 1.58 pounds.

The question of whether and to what extent authorized weights have been exceeded in the shipment of household goods and the excess costs involved are considered to be matters primarily for administrative determination since this Office has no first hand information concerning the matter and we necessarily must rely on the administrative determination in the absence of evidence clearly showing that it is in error. 46 Comp. Gen. 740 (1967); 51 Comp. Gen. 541, 543 (1972); B-190541, November 25, 1977.

The member does not contend the weights as shown on the weight certificates were erroneous. The transportation voucher prepared by the carrier in support of its freight charges is supported by a valid weight certificate. Thus in the absence of fraud, we know of

B-189888

no authority to deny the carrier its lawful freight charges. If this charge includes an amount for excess weight, in accordance with paragraph M8007-2, 1 JTR, the member must bear that cost.

The Department of Defense Personal Property Traffic Management Regulation (DOD Dir. 4500.34R, May 1, 1971), paragraph 6007c directs Installation Transportation Officers (ITO's) to order reweighs under certain conditions.

Those regulations established standards and special procedures concerning the movement and storage of personal property for all Departments of Defense personnel (military and civilian). However, its provisions do not apply to administration or interpretation of entitlements. See paragraphs 1000 and 1001 Personal Property Traffic Management Regulation DOD 4500-34-R. Procedures governing entitlements are set forth in the JTRs (Volume 1 - Military, Volume 2 - Civilians). Thus, the Personal Property Traffic Management Regulation while it may be specific in nature, does not provide additional entitlements nor does it confer benefits not specifically authorized by the statute itself or the JTRs. In a case such as this when the weight of the household goods is clearly established by the weight certificate and no substantial evidence is presented to indicate that such certificate is in error, a charge against the member for excess weight must be sustained. A failure to fully follow procedural or instructional regulations standing alone is not sufficient to relieve the member of the charges for excess weight. Thus, liability for the excess weight charges under the above regulation is not contingent upon notification to the member of the excess weight.

Accordingly, we do not find sufficient basis to conclude that the weights used in the administrative computation of excess costs were not correct, and the settlement of June 28, 1977, is sustained.


Deputy Comptroller General
of the United States